

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

| |
|--|
| California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977. |
|--|

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

H026437

Plaintiff and Respondent,

(Santa Clara County
Superior Court
No. EE301180)

v.

DANIEL PARKER,

Defendant and Appellant.

_____ /

Defendant was charged by complaint with possession of methamphetamine for sale (Health & Saf. Code, § 11378), possession of cocaine (Health & Saf. Code, § 11350, subd. (a)) and possession of marijuana (Health & Saf. Code, § 11357, subd. (b)). It was further alleged that he had suffered four prior narcotics convictions (Health & Saf. Code, § 11370.2, subd. (c)) and one prior serious felony conviction (Pen. Code, §§ 667, subds. (b)-(i), 1170.12).

Defendant entered into a plea agreement under which he would plead guilty to all three counts and admit all of the prior conviction allegations in exchange for an “agreed upon disposition” of “a state prison sentence of thirteen years and four months, top and bottom.” The plea agreement had no other terms. The trial court advised defendant that “[t]here is a restitution fund fine of between \$200 to \$10,000

that the court must order when I sentence.” Defendant entered guilty pleas and admitted the enhancements. The probation report recommended that a \$5200 restitution fund fine be imposed.

Defendant was sentenced to the agreed term. The court also imposed a \$2600 restitution fund fine and a matching parole revocation fine. Defendant filed a timely notice of appeal challenging only his sentence.

Appointed appellate counsel filed an opening brief that stated the case and the facts but raised no issues. Defendant was notified of his right to submit written argument on his own behalf, but he failed to avail himself of the opportunity. We requested briefing on the issue of whether the \$2600 restitution fund fine was a violation of defendant’s plea bargain. The Attorney General submitted a brief conceding that, under *People v. Walker* (1991) 54 Cal.3d 1013, the \$2600 fine and the matching parole revocation fine were imposed in violation of the plea bargain. We agree.

Walker held that imposition of a mandatory fine in excess of the minimum violates the plea bargain where the fine was not an element of the bargained-for punishment and the fine is not “insignificant.” Here, the \$2600 restitution fund fine was not an element of the bargained-for punishment and is not insignificant. Consequently, the imposition of this fine violated the plea bargain. The appropriate disposition is to reduce the restitution fund fine to the minimum and to reduce the parole revocation fine to match.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we have reviewed the entire record and have concluded that there are no other arguable issues on appeal.

The judgment is hereby modified to reduce the restitution fund fine from \$2600 to \$200 and to reduce the suspended parole revocation fine to the same amount. The trial court is directed to prepare an amended abstract of judgment reflecting these

modifications and to forward a certified copy of the amended abstract to the Department of Corrections. The modified judgment is affirmed.

Mihara, J.

WE CONCUR:

Rushing, P.J.

Premo, J.